

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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MAY - 8 1996

In the Matter of)
)
The Provision of Interstate and)
International Interexchange)
Telecommunications Service Via the)
Internet by Non-Tariffed, Uncertified)
Entities)
)
America's Carriers Telecommunication)
Association ("ACTA"))
Petitioner)

FEDERAL COMMUNICATIONS COMM.
OFFICE OF SECRETARY

RM-8775

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COMMENTS OF AMERICAN TELEGRAM CORPORATION

I. Introduction.

American Telegram Corporation ("American Telegram") hereby comments on the Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking from America's Carriers Telecommunications Association ("ACTA Petition"). American Telegram respectfully urges the Commission to establish jurisdictional authority over on-line service providers. American Telegram believes that with respect to e-mail, including the ordering of messaging services, these providers should be regulated as common carriers under Title II of the Communications Act, thus proscribing the kinds of discriminatory practices described in detail below.

American Telegram is a telegram company which delivers messages to customers in the United States and Canada 365 days a year, providing same day, next day, two day, and three day messages. In addition to the five hundred agents for its North American services, American

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Telegram's International Network delivers messages worldwide. American Telegram has transmitted urgent personal and business messages to areas affected by natural disasters and emergencies where no other means of communication was available. For instance, numerous San Francisco residents used American Telegram's service in the aftermath of the 1989 San Francisco earthquake.

To order a telegram from American Telegram or any other telegram provider, a customers can call that provider's local or 1-800 number. In recent years, however, a new way of ordering telegrams has emerged. Customers can now order telegrams through on-line computer service providers like American On-line ("AOL"), CompuServe, and Prodigy. Here, the on-line customer e-mails his or her message to the on-line service provider, with the telegram company ultimately delivering a hard copy of the message to the recipient.

Unfortunately, despite the company's requests, American Telegram has been unable to obtain access to the subscribers of these on-line service providers. Rather than providing equal access to all telegram providers, the major on-line service providers have established special arrangements with some of the largest telegram companies. For example, Prodigy has formed an exclusive relationship with MCI Mail. MCI Mail has formed a relationship with CompuServe also, while AT&T EasyLink has an arrangement with Western Union. According to such agreements, the on-line service provider makes that company's telegram service an initial menu option, eliminating the need to proceed through multiple screen interfaces to reach the ordering platform. By clicking on the appropriate icon, subscribers can quickly and easily place a telegram order with that company. In addition, the on-line service provider performs billing and collection for that telegram company, with any telegram charges appearing on the on-line

service's monthly bill. Again, these on-line service providers have repeatedly refused to offer these terms and conditions to American Telegram.

These arrangements provide MCI Mail, Western Union, and other similarly situated companies with a significant advantage over their competitors. These companies gain direct access to these on-line service subscribers, a group of potential customers now numbering more than eight million. American Telegram, in contrast, has been effectively denied this access. While AOL has offered to set up a "home page" for American Telegram within the 'shopping mall' portion of its on-line service, AOL's yearly price tag is exorbitant. Moreover, even if American Telegram met this price, to reach American Telegram's home page, subscribers would have to determinedly seek out its service, navigating through a succession of screen interfaces.

II. The ACTA Petition

The Commission has the opportunity to address discriminatory treatment by on-line service providers in its response to the ACTA Petition, which focuses on the impact of emerging Internet voice telephony technologies on the telephone industry and its consumers. American Telegram agrees with ACTA that the Commission possesses the authority to regulate interstate and international services provided over the Internet. According to the Communications Act of 1934 (the "Act"), Congress created the Commission

[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication

The Communications Act of 1934, 47 U.S.C. § 151.

Clearly, the terms of the Act encompass services provided over the myriad wire networks of the Internet. American Telegram believes the Commission also has the power to regulate on-line service providers, authority reaffirmed by several key definitions in the Telecommunications Act of 1996 (the “Telecom Act”). The Telecom Act defines “Telecommunications” as follows:

Telecommunications.--The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

47 U.S.C. § 153(48).

American Telegram believes that the transmission of e-mail, including the ordering of messaging services, should be treated as “telecommunications” under the Telecom Act’s definition. An e-mail author formulates a message and chooses its destination, transmitting the message to the recipient through the on-line service provider’s communications system. The recipient receives this message with the content unchanged.^{1/}

Even if the precise nature of this on-line transmission prevents these services from being considered “telecommunications” in a technical sense, such outdated technological distinctions should not arbitrarily determine the regulatory status of on-line service providers. E-mail is a simple, direct, real-time form of communication that has become a common social and commercial tool. With this service assuming a role increasingly similar to voice telephony, and with any technical differences between such networks becoming increasingly irrelevant, e-mail, including the ordering of messaging services, should be treated as “telecommunications.”

^{1/} The vast majority of these transmissions are interstate or international, and are therefore not excluded from the Commission’s jurisdiction.

Given the practical status of these transmissions as “telecommunications,” on-line service providers such as AOL, Compuserve, and Prodigy clearly offer a “telecommunications service,” which the Telecom Act defines as the following:

Telecommunications Service.--The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

47 U.S.C. § 153(51)

The on-line service providers offer telecommunications for a fee directly to the public, thereby fitting within this definition. The on-line service providers are thus “telecommunications carriers,” which the Telecom Act defines as follows:

Telecommunications Carrier.--The term “telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). . . .

47 U.S.C. § 153(49)

The Telecom Act further provides that “[a] telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services . . .” Thus, with respect to such services as e-mail and the ordering of messaging services, AOL and the other on-line service providers should be treated as common carriers, subject to the requirements of Sections 201 and 202 of Title II of the Communications Act. The following provisions are the most significant

Section 201 [47 USC Section 201]. Service and Charges

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor . . .

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable and any such charge, practice, classification or regulation that is unjust or unreasonable is hereby declared to be unlawful. . . .

Section 202 [47 USC Section 202]. Discrimination and Preferences

(a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

. . . .

The above-described arrangement between Prodigy and MCI Mail, and AT&T EasyLink and Western Union, would violate Section 202(a), if applied. By denying American Telegram and other telegram providers the same terms and conditions as MCI Mail and Western Union, these on-line service providers are clearly engaging in an unlawful, discriminatory practice.

If an on-line service provider refused to make American Telegram's products available to its on-line subscribers for any price, that provider would violate Section 201(a) and (b) by unjustly and unreasonably failing to furnish their communication service upon reasonable request. In addition, because the product in this case, telegram service, is itself a telecommunications service already subject to common carrier regulation, this refusal would also implicate the interconnection provision of the Telecom Act. Section 101 of the Telecom Act states the following:

Sec. 251. Interconnection.

(a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.--Each telecommunications carrier has the duty--

- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers

For failing to interconnect, the on-line service provider would be subject to the same sanctions as applied to other, more traditional telecommunications providers.

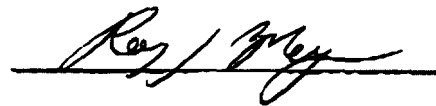
Thus, in considering the issues raised in ACTA's petition, the Commission should also take account of the emerging role of the Internet and on-line services in the commercial world. An increasing number of consumers are contacting businesses and ordering products not by dialing those businesses' 800 numbers, but by utilizing available on-line resources. Given the overall size of on-line subscribership and the degree of concentration in the on-line service industry -- AOL, CompuServe, and Prodigy currently enjoy almost ninety percent of total on-line subscribership -- many companies will likely someday experience the discriminatory treatment described above.

III. Conclusion.

With the definition of "telecommunications carrier" encompassing both on-line service providers and interstate, interexchange telephone providers, allowing on-line service providers alone to engage in exclusionary, discriminatory practices would represent an arbitrary distinction between these competing communications technologies. American Telegram hereby respectfully urges the Commission to establish regulatory authority over on-line service providers. These providers should be regulated as common carriers under Title II of the Communications Act, thus proscribing the discriminatory practices to which American Telegram has been subjected in recent years.

Respectfully submitted,

AMERICAN TELEGRAM CORPORATION

A handwritten signature in dark ink, appearing to read "Roger Meyers", written over a horizontal line.

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Dated: May 8, 1996

CERTIFICATE OF SERVICE


I, Elinor W. McCormick, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 8th day of May 1996, I served a true copy of the foregoing "**COMMENTS OF AMERICAN TELEGRAM CORPORATION**" by first class United States Mail, postage prepaid, upon the following:

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